



March 2, 1999

Ms. Linda Wiegman  
Texas Department of Health  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756-3199

OR99-0609

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 122386.

The Texas Department of Health ("TDH") received a request to obtain a copy of any survey findings, program recommendations, deficiencies, technical assistance or other results of TDH's on-site visits at two mental health centers. You have released some of the information but you contend that the identities of the patients are confidential under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.


We first note that you failed to timely request a decision from this office. Government Code section 552.301(a) requires a governmental entity seeking to withhold public information to submit a request for a decision to the attorney general "not later than the 10th business day after the date of receiving the written request." Government Code section 552.302 states: "If a governmental body does not request an attorney general decision as provided by Section 552.301(a), the information requested in writing is presumed to be public information." This legal presumption that the requested information is open to the public may be overcome only by a demonstration of a compelling interest. *Hancock v. State Bd. Of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). A demonstration that the requested information is deemed confidential by law is a compelling interest sufficient to negate this presumption. See Open Records Decision No. 150 (1977).

Section 552.101 of the Government Code excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. You suggest that disclosure of a portion of the requested information would violate the common-law right to privacy of the identified patients because the marked documents contain highly intimate or embarrassing information

about a person's private affairs such that its release would be highly objectionable and is of no legitimate concern to the public. Information may be withheld under section 552.101 in conjunction with common-law privacy only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has previously recognized that information might implicate an individual's common-law privacy interests if it relates, for example, to a drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures or emotional/mental distress. *See* Open Records Decision No. 370 (1983); *see also* Open Records Decision Nos. 343 (1982); 262 (1980). We conclude that the marked information at issue here reflects the names of patients at the mental health centers, is deemed confidential by law pursuant to the common-law right to privacy.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

  
David Van Brunt Price  
Assistant Attorney General  
Open Records Division

DVP\nc

Ref: ID#122386

Enclosures: Submitted documents

cc: Mr. Steve Womack  
Sunglo Fellowship Centers Inc.  
3201 South Expressway 83  
Harlingen, Texas 78550  
(w/o enclosures)